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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44650
Plaintiff-Respondent,)	
)	Boundary County Case No.
v.)	CR-2016-520
)	
DARRELL WILLIAM NANCE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Nance failed to establish that the district court abused its discretion by imposing a unified sentence of seven years, with two and one-half years fixed, upon his guilty plea to possession of methamphetamine, and a concurrent sentence of two and one-half years fixed upon his guilty plea to attempted destruction of evidence?

Nance Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Nance pled guilty to possession of methamphetamine and attempted destruction of evidence and the district court imposed a unified sentence of seven years, with two and one-half years fixed, for the possession charge and a concurrent sentence of two

and one-half years fixed for the attempted destruction of evidence charge. (R., pp.69-73.) Nance filed a notice of appeal timely from the judgment of conviction. (R., pp.75-77.)

Nance asserts his sentence is excessive, and that the district court abused its discretion by declining to order probation or retain jurisdiction, in light of his mental health issues, substance abuse issues, and his performance during his last rider program. (Appellant's brief, pp.3-6.) The record supports the sentence imposed.

Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Windom, 150 Idaho 873, 875, 253 P.3d 310, 312 (2011); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Windom, 150 Idaho at 875, 253 P.3d at 312 (citations omitted). A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id. at 875-76, 253 P.3d at 312-13; State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001).

The decision whether to retain jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The primary purpose of a district court retaining jurisdiction is to enable the court to obtain additional information regarding whether the defendant has sufficient rehabilitative potential and is suitable for probation. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). Probation is the ultimate goal of retained

jurisdiction. Id. There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. Id.

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The goal of probation is to foster the probationer's rehabilitation while protecting public safety. State v. Cheatham, 159 Idaho 856, ___, 367 P.3d 251, 256 (Ct. App. 2016) (citations omitted).

The maximum prison sentence for possession of methamphetamine is seven years and for attempted destruction of evidence it is five years. I.C. §§ 18-2303, 37-2732(c)(1). The district court imposed a unified sentence of seven years, with two and one-half years fixed, for the possession charge and a concurrent sentence of two and one-half years fixed for the attempted destruction of evidence charge, both of which fall within the statutory guidelines. (R., pp.69-73.) At sentencing, the district court addressed Nance's extensive criminal history, his failure to rehabilitate, and his quick return to drugs when released from the rider program. (11/7/16 Tr., p.13, L.20 – p.15, L.12.) The state submits that Nance has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Nance's conviction and sentence.

DATED this 5th day of April, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of April, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 can I go back to Bonner's Ferry? That's where my
2 family is."

3 They transferred me up here. When I got up
4 here my mother even sat in with Ron Pell and me and
5 told me that I am not able to actually stay there.
6 I could sleep at night; during the day I would have
7 to be gone. It's my uncle's property, and I wasn't
8 able to stay there. That's what led me back into my
9 old associations.

10 I feel I could do good if I was able to be
11 back on probation and just transferred to
12 Coeur d'Alene. And transitional housing, you can pay
13 for transitional housing for the first month and then
14 get a job. They do have that opportunity too. So
15 it's not just from the retained jurisdiction.

16 THE COURT: Ms. Brooks, for the record, any
17 legal, factual or equitable reason not to impose the
18 sentence?

19 MS. BROOKS: No, Your Honor.

20 THE COURT: Mr. Nance, I'm sorry, but at
21 this point I am sentencing you on your ninth felony
22 conviction. You are 35 years old.

23 And we sent you on a retained the last time
24 you had a felony in Boundary County and in Kootenai
25 County, came back and immediately started to use

1 again.

2 At this point, I don't see an alternative to
3 the imposition of sentence. At some point when a
4 person gets felony after felony, protection of
5 society demands that the Court has to impose
6 sentencing. And I think at this point, we have now
7 reached that point.

8 Another probation violation, another new
9 felony charge shortly after getting off the retained
10 jurisdiction program; a history of this being a ninth
11 felony conviction.

12 I wish there were more programs. But you
13 absolutely have shown that you cannot be successful
14 on probation. And I believe that we are at the point
15 where the Court needs to impose sentence. You just
16 seem to be unable to break away from drugs, your drug
17 lifestyle.

18 You had your first conviction when you were
19 20 years old and it's just continued over and over
20 since that point. And I think we have exhausted
21 other options at this time.

22 So, I am going to impose a sentence of two
23 and a half years on the attempted destruction of
24 evidence charge and impose a sentence. And I am
25 going to impose a unified sentence of two and a half

1 years fixed, four and a half years indeterminate on
2 the possession of methamphetamine charge. And I am
3 going to impose sentence on the probation violation.

4 I am only going to impose court costs. I
5 don't know how you are ever going to pay. I am going
6 to impose the court costs on the new counts, which
7 are \$285.50 on the possession charge, \$245.50 on the
8 destruction of evidence.

9 The State did agree to dismiss the
10 persistent violator, which could have given you a
11 life sentence for this many felony convictions,
12 \$100 to the state police for the testing.

13 And I will give you credit for 145 days
14 already served on the brand-new case. I will add
15 that credit for time served to the time you've
16 already served on your other -- on the probation
17 violation case -- and give you credit for all time
18 served.

19 MS. BROOKS: Are these sentences concurrent,
20 Your Honor?

21 THE COURT: Yes, thank you. The sentences
22 are all to be served concurrently.

23 The 2015 case, the underlying sentence was
24 three years fixed, four years indeterminate, unified
25 seven-year sentence. And when Mr. Nance was released